



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARBETT CORPORATION)

Appearances:

For Appellant: Fielding H. Lane, Attorney at Law

For Respondent: Jack Rubin, Junior Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the protest of Marbett Corporation to a proposed assessment of additional franchise tax in the amount of \$118.52 for the income year ended March 31, 1953.

Appellant is a California corporation with its principal activities, the ownership and operation of real estate, in the City and County of San Francisco. During the income year in question, Appellant engaged an attorney to represent it before the Board of Supervisors of San Francisco in an effort to obtain the vacating of approximately 75 feet of a street that intruded upon Appellant's business properties. Appellant paid the attorney a fee of \$1,862.93 for his services.

The Board of Supervisors agreed to vacate the above-mentioned portion of the street on condition that Appellant, at its own expense, improve another portion of the street by constructing a new manhole, relocating an existing catch basin, constructing culverts and changing the contour of the street surface to provide proper drainage. This work was done at a cost to Appellant of \$1,100.00.

Thereafter, within the income year, San Francisco deeded to Appellant all of its interest in that part of the street which Appellant wanted vacated. San Francisco's interest in the street was an easement and Appellant owned the underlying fee interest.

Appellant contends that the legal expenses and the street repair expenses are deductible as "ordinary and necessary expenses paid or incurred during the income year in carrying on business" as provided in Section 24121a (now Section 24343) of the Revenue and Taxation Code. The Franchise Tax Board contends that these amounts are capital

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expenditures to be added to the cost of Appellant's property. It cites Section 24201a (now Section 24422) of the Revenue and Taxation Code, which provides that no deduction shall be allowed for "any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property."

The following statement from United States v. Akin, 248 Fed. 2d 742, 744, is in point:

"... it may be said in general terms that an expenditure should be treated as one in the nature of a capital outlay if it brings about the acquisition of an asset having a period of useful life in excess of one year or if it secures a like advantage to the taxpayer which has a life of more than one year, "

In accordance with this principle, it has been held that the cost to an abutting owner of acquiring an alley-way, including legal fees in connection with the acquisition, was a capital expenditure (Mary Haller, 14 B.T.A. 488). It has also been held that the cost of paving a public street to gain advantage for the taxpayer's business was a capital expenditure (Woodside Cotton Mills Co., 13 B.T.A. 266).

Appellant relies on Brown-Forman Distillers Corp. v. U. S., 132 Fed. Supp. 711. In that case the taxpayer, who owned the underlying fee interest in a street as well as in land adjoining it, secured a resolution from a city closing the street. He thereafter paid a fee to the city attorney to file a formal suit to foreclose possible claims of other property owners, and he also paid sums of money to certain of those owners. In holding that these payments were current expenses, the court emphasized that the taxpayer had obtained the city's entire interest before these expenses were incurred. As distinguished from that case, the expenses here were incurred prior to the closing of the street and clearly as a condition precedent to the closing.

It is obvious to us that Appellant enlarged its interest in the subject property by the elimination of the public easement. We conclude that the expenditures here involved were "for permanent improvements or betterments made to increase the value of . . . property" within the meaning of former Section 24201a of the Revenue and Taxation Code.

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O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the protest of Marbett Corporation to a proposed assessment of additional franchise tax in the amount of \$118.52 for the income year ended March 31, 1953, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of April, 1959, by the State Board of Equalization.

John W. Lynch, Chairman

George R. Reilly, Member

Richard Nevins, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary